

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213595**DATE:** April 23, 1984**MATTER OF:** Maintenance Pace Setters, Inc.**DIGEST:**

Rejection of protester's low bid for failure to acknowledge an amendment which corrected square footage measurement for base facility offices was improper where solicitation obligated protester to provide custodial services for those offices regardless of footage and protester's bid for amended solicitation is still low.

Maintenance Pace Setters, Inc. (MPSI), protests the rejection of its low bid under invitation for bids (IFB) No. F3065-83-B-0069, issued by the Department of the Air Force (Air Force).

We sustain the protest.

The IFB requested monthly prices for custodial services for buildings at Griffiss Air Force Base, New York, for an initial 11-month period and two 1-year option periods. MPSI's low bid was rejected for failure to acknowledge amendment 0001 which corrected the floor space measurement for the 485th area in building No. 1 from 6,500 square feet to 65,000 square feet. MPSI's monthly bid price on the face of the bid for that facility is the product of \$0.053 per square foot times 6,500 square feet. Award was made to Oneida Building Services, Inc. (Oneida), the next low bidder.

The Air Force indicates that, since award was made on the basis of extended prices, a significant increase in footage, such as the increase contained in amendment 0001, could have substantially affected MPSI's bid price by as much as \$33,115.50 for the initial 11-month contract period. Therefore, the Air Force concludes that the amendment is material and that the rejection of MPSI's bid for failing to acknowledge this amendment was proper.

MPSI argues that the amendment is not material and states that it is willing to perform at the bid price regardless of the change in square footage contained in the amendment.

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A bidder's failure to acknowledge a material IFB amendment renders the bid nonresponsive and thus unacceptable since, absent such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. See Jose Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality, delivery, or the relative standing of the bidders. Defense Acquisition Regulation § 2-405(iv)(B) (Defense Acquisition Circular No. 76-17, September 1, 1978). An amendment is not material where it merely clarifies an existing IFB requirement. A bidder's failure to acknowledge such an amendment is waivable as a minor informality. See Four Seasons Maintenance, Inc., B-213459, March 12, 1984, 84-1 CPD ____.

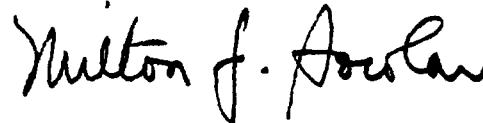
We find that the IFB as issued obligated the contractor to provide custodial services for the offices in question regardless of footage and, therefore, amendment 0001 made no significant change to the IFB. The IFB requires that custodial services be provided for the 485th area in building No. 1. The IFB warns bidders to visit the site and includes a drawing which depicts the boundaries of these offices. Amendment 0001 merely provides a square footage estimate for pricing purposes; it does not impose any different or additional obligation on the contractor nor does it affect the basic requirement to provide custodial services for the specified area. Therefore, we do not consider the amendment material.

Moreover, MPSI's bidding pattern for the other areas in the IFB establishes that the firm's unit price would be the \$0.053 per square foot stated for these services for the 485th area. Based upon this, we find that MPSI's monthly bid price for either square footage estimate is low. Therefore, since amendment 0001 did not affect MPSI's rank as low bidder, the firm's failure to acknowledge the amendment did not prejudice other bidders.

Accordingly, we recommend that the Air Force terminate Oneida's contract for the convenience of the government and award to MPSI, if otherwise proper. In that connection, we note that the agency report indicates that there were errors in the price extensions for other areas in MPSI's bid. Such errors should be handled under appropriate error in bid

procedures. If MPSI remains eligible, the award to MPSI should be made on a basis that includes the services for the 485th area at its monthly bid price based on 6,500 square feet, since MPSI stated it will perform on that basis regardless of the change in square feet contained in amendment 1.

Since our decision contains a recommendation for corrective action, we have furnished copies to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to those committees concerning the action taken with respect to our recommendation.

A handwritten signature in black ink, reading "Milton F. Aoulan". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States